

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6986 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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LAMANSINH @ LACCHU

VIRBAHADURSINH GURKHA

Versus

STATE OF GUJARAT  
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Appearance:

MS JAYSHREE C BHATT for Petitioner

MR MA BUKHARI, AGP, for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/12/1999

ORAL JUDGEMENT

1. The petitioner came to be detained by virtue of an order passed on 5th April 1999 by Commissioner of Police, Ahmedabad city, Ahmedabad in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985

[hereinafter referred to as 'the PASA Act', for short]. The detaining authority in the grounds of detention took into consideration that the petitioner is involved in two prohibition cases which are registered against him. The authority took into consideration the statements of two anonymous witnesses and came to a conclusion that the petitioner is a bootlegger, his activities are detrimental to public order and is, therefore, immediately required to be prevented from pursuing his activities and therefore, is required to be detained under PASA.

2. The petitioner has approached this Court with this petition under Article 226 of the Constitution of India challenging the order of detention on the ground that there is improper exercise of powers u/s 9[2] of the PASA Act.

3. Ms. Bhatt, learned advocate appearing for the petitioner has relied only on the ground that there is improper exercise of powers u/s 9[2] of the PASA Act. In order to substantiate her argument, she stated that the statements of the anonymous witnesses were recorded on 4th April 1999 and the same were verified by the detaining authority on 5th April 1999 and the order came to be passed on that very day. Therefore, there was no time for the detaining authority to take into consideration the relevant important factors while exercising powers u/s 9[2] of the PASA Act. She has pressed into service decision of this Court in the case of Kalidas Chandulal Kahar v/s State of Gujarat as reported in 1993[2] GLR 1659 and submitted that the petition may be allowed.

4. Mr. Bukhari, learned AGP has opposed this petition. The affidavit in reply does not state any details as to what material was considered by the detaining authority while exercising powers u/s 9[2] of the PASA Act. The authority has in clear terms stated that, on material placed before him and on personally verifying the genuineness and correctness and veracity of the incidents of the unregistered offences and on being subjectively satisfied that the names and addresses of the witnesses, if disclosed to the detenu, the lives and properties of the witnesses would be in danger and therefore, privilege u/s 9[2] of the PASA Act was claimed.

5. In view of the rival side contentions, the factual part remains undisputed that the statements of witnesses were recorded on 4th April 1999. The same were verified on 5th April, 1999 and the order of detention

came to be passed on that very day i.e. on 5th April 1999. The detaining authority has based the subjective satisfaction for exercise of powers u/s 9[2] of the PASA Act and the statements of the witnesses verified by it. It may be noted that the detaining authority must have some material to arrive at a subjective satisfaction about the genuineness of the fear expressed by the witnesses which would require a thoughtful consideration. A balance is required to be struck by the authority while exercising powers u/s 9[2] of the PASA Act between the right of the detainee of making an effective representation and the public interest and for considering either of the two, there has to be some material before the detaining authority which can be considered by the detaining authority. In the instant case, there appears nothing to indicate factors that were available and considered by the authority. The affidavit reply is filed by the detaining authority also does not disclose any details as to material available which were considered by the detaining authority. The Court is therefore at loss to appreciate how the detaining authority could have recorded a subjective satisfaction that the genuineness of the fear expressed by the witnesses qua the petitioner, so also the correctness of the statements qua the incidents narrated therein. That being so, the exercise of powers u/s 9[2] of the PASA Act stands vitiated and has resulted into depriving the petitioner of making an effective representation guaranteed under the Constitution of India. The order of detention therefore would stand vitiated. The ratio in the case of Kalidas C. Kahar will squarely apply to the present case.

6. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police, Ahmedabad city, Ahmedabad on 5th April 1999 in respect of the petitioner - detainee - Laxmansinh alias Lachhu Virbahadursinh Gurkha, is hereby set aside. The petitioner be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[ A.L.DAVE, J. ]

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